

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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In the Matter of PATTERSON-MacDONALD SHIP-  
BUILDING COMPANY, a Corporation, Bankrupt.

COMMONWEALTH OF AUSTRALIA,

Petitioner,

vs.

F. E. BURNS, W. C. DAWSON, JAMES FOWLER and  
JOHN L. McLEAN, as Trustee in Bankruptcy  
of PATTERSON-MacDONALD SHIPBUILDING  
COMPANY, a Corporation, Bankrupt,  
Respondents.

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**P**etition for Revision

Under Section 24b of the Bankruptcy Act of Congress,  
Approved July 1, 1898, to Revise, in Matter of  
Law, a Certain Order of the United States  
District Court for the Western District  
of Washington, Northern Division,  
and Transcript of Record in  
Support Thereof.

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**FILED**

JAN 19 1923

**F. D. MONOKTON,**  
CLERK.



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**Circuit Court of Appeals**  
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COMMONWEALTH OF AUSTRALIA,  
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United States Circuit Court of Appeals for the  
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No. —.

In the Matter of PATTERSON-MacDONALD  
SHIPBUILDING COMPANY, a Corpora-  
tion, Bankrupt.

COMMONWEALTH OF AUSTRALIA,

Petitioner,

vs.

F. E. BURNS, W. C. DAWSON, JAMES  
FOWLER and JOHN L. McLEAN, as Trus-  
tee in Bankruptcy of PATTERSON-Mac-  
DONALD SHIPBUILDING COMPANY, a  
Corporation, Bankrupt,

Respondents.

**Petition for Review of Commonwealth of Australia.**

To the Honorable Judges of the United States Cir-  
cuit Court of Appeals for the Ninth Circuit:

The petition of the Commonwealth of Australia  
respectfully shows unto the Court:

I.

That upon March 19, 1920, an order was duly  
entered in the United States District Court for the  
Western District of Washington, Northern Divi-  
sion, adjudging Patterson-MacDonald Shipbuilding  
Company, a corporation, Bankrupt, upon its volun-  
tary petition for such an order and upon the said  
day the matter of the said bankruptcy was referred  
to the Honorable Cicero R. Hawkins, Referee in  
Bankruptcy, and thereafter on April 2, 1920, at

the first meeting of creditors of the said bankrupt duly called and held before the said referee, [1\*] John L. MacLean was duly elected trustee of the said bankrupt, and thereafter duly qualified as such and ever since has been and is now the duly authorized and acting trustee for said bankrupt.

## II.

That thereafter, on the 31st day of July, 1920, Mark Sheldon, as Commissioner for the Commonwealth of Australia, for and on behalf of this petitioner, presented and filed with the said referee a claim of this petitioner against the said bankrupt, in a sum in excess of \$1,000,000. That upon objections made to the said claim by the trustee, the said claim has been by the District Court disallowed, but an appeal from the said order of disallowance is now pending in this court, and according to the present knowledge and advice of this petitioner, this petitioner has a valid claim against the said bankrupt for a sum in excess of \$1,000,000 and the total of all other approved and unpaid claims against the said bankrupt is less than \$70,000.

## III.

That subsequent to the filing of this petitioner's claim, the said trustee filed objections thereto, and thereupon on October 12, 1920, an order was entered in the said District Court in the said bankruptcy proceedings, wherein it was ordered as follows, to wit:

“That C. R. Hawkins be and he hereby is appointed a special master in chancery to take

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\*Page-number appearing at foot of page of original certified Transcript of Record.

evidence and make findings upon the questions arising out of the proof of secured claim filed by Mark Sheldon as Commissioner for the Commonwealth of Australia in the United States of America, and the objections thereto by the trustee in bankruptcy, and submit his findings and conclusions to this court in the same manner as if sitting as a referee in bankruptcy." [2]

#### IV.

That thereafter the said claim and the objections thereto came duly on for hearing before the said C. R. Hawkins, sitting as special master pursuant to the said order of October 12, 1920, and while the said hearing was in progress the said trustee, instead of presenting to the said master his claims for offsets against the claim of this petitioner, asserted the right to have such claims arbitrated pursuant to a clause which was contained in the contract which formed the basis of this petitioner's claim, the said clause being known as paragraph 18 of said contract, and providing in substance that if any question should arise between the said bankrupt and this petitioner as to the said contract, or the ships, or the right of either party that could not be adjusted by the parties under the said contract, then the said question should be settled and adjusted by arbitration in Seattle, Washington, and the said bankrupt should choose an arbitrator and this petitioner should choose an arbitrator, and the two thus chosen should choose a third and a decision of the majority of the board so constituted to be final. Thereupon the said trustee without any



compliance, substantial or at all, with §26 of the Bankruptcy Act and Rule 33 of the Bankruptcy Rules, appointed said respondent Frank E. Burns to act as arbitrator for him pursuant to said paragraph 18, and the said respondent Burns in conjunction with one Frank Walker acting as arbitrator appointed by this petitioner, appointed the said respondent W. C. Dawson.

V.

That thereafter there was presented and filed with the said master, a paper purporting to be an award by the said Frank E. Burns, W. C. Dawson and Frank Walker, finding in favor of the said trustee in the sum of \$1,028,458.66. [3]

VI.

That the said award was approved by the said master and subsequently by the district Judge, but its force and validity are now pending in this court upon the appeal of this petitioner from the order of the said district court denying this petitioner's claim.

VII.

That there was also filed and presented to the said master another paper purporting to be an award in arbitration by one James Fowler, which recited that he had been appointed by this petitioner and the said trustee to arbitrate certain questions which the said award purported to determine.

VIII.

That thereafter at a meeting of the creditors of the said bankrupt, held on August 31, 1921, there were presented at the said meeting claims from the



said James Fowler in the sum of \$500.00, Frank E. Burns in the sum of \$3,000.00, and W. C. Dawson in the sum of \$1500.00, for services as arbitrators as aforesaid.

### IX.

That at said meeting of the creditors and while the said claims were being considered, this petitioner objected thereto upon the grounds that the said trustee had no power or authority to employ arbitrators without the express order and direction of the bankruptcy court in compliance with section 26 of the Bankruptcy Act and Rule 33 of the Bankruptcy Rules, and that there had been no compliance with the said section 26 of the Bankruptcy Act or Rule 33 of the Bankruptcy Rules, either substantially or at all, and that the employment of the said arbitrators was contrary to the express directions contained in the said order entered in the said District Court of October 12, 1920, appointing a special master to take evidence and make findings upon [4] the question of this petitioner's claim and the objections thereto, but that in spite of this petitioner's objection, the said referee made an order allowing the said claims and ordering payment thereof.

### X.

That thereafter this petitioner duly filed its petition for review of the said order, in which petition for review this petitioner claimed that the said ruling and order of the referee was erroneous for the following reasons:

1. That the said trustee had no power or author-

ity to employ arbitrators without the express order and direction of the bankruptcy court.

2. No order of the bankruptcy court was ever entered authorizing the employment of any arbitrators or authorizing the trustee to submit any question to arbitration.

3. The submission by the trustee of any question relating to the liquidation of this petitioner's claim to any other Court or board of arbitrators was contrary to the express directions contained in the above-mentioned order appointing a special master to pass upon the said claim.

4. The awards of the said arbitrators are void upon their face.

5. The said arbitrators have rendered no beneficial service to the said trustee for the reason that the said awards have not yet been approved by this Court, but will be found by this Court upon objections which have been offered thereto by this petitioner to be void and of no force and effect.

## XI.

That thereafter the said referee duly filed his certificate on review in the office of the clerk of the said District Court [5] and thereafter on the 26th day of October, 1922, the said Court entered its order upon the said petition for review, denying the said petition and approving, confirming and sustaining the said order of the referee in every respect, to which order this petitioner took due and proper exception.

## XII.

Your petitioner further shows that it is aggrieved

by the said orders of the said District Court and injured thereby, and that the errors complained of consist of the following:

First: The Court erred in not sustaining the objections of the petitioner to the order of the said referee on the ground that the said trustee had no power or authority to employ arbitrators without the express order and direction of the bankruptcy court.

Second: The Court erred in not sustaining the objections of this petitioner to the said order of the said referee on the ground that no order of the bankruptcy court was ever entered authorizing the employment of any arbitrators or authorizing the trustee to submit any question to arbitration.

Third: The Court erred in not sustaining the objections of this petitioner to said order of the said referee on the ground that the submission by the trustee of any question relating to the liquidation of this petitioner's claim to any other court or board of arbitrators was contrary to the express directions contained in the order of this Court appointing a special master to pass upon the said claim.

Fourth: The Court erred in not sustaining the objections of this petitioner to said order of the said referee on the ground that the awards of the said arbitrators are void upon their face.

Fifth: The Court erred in not sustaining the objection of this petitioner to said order of the said referee on the ground [6] that the said arbitra-

tors have rendered no beneficial service to the said trustee.

Sixth: The Court erred in approving the order of the referee ordering payment to the said F. E. Burns in the sum of \$3000.00, and to the said W. C. Dawson in the sum of \$1500.00, and to the said James Fowler in the sum of \$500.00.

## XII.

Your petitioner further shows that the said trustee and his attorneys have throughout the said proceedings favored and advocated the payment of the said claims and the attorneys for the said trustee appeared upon the hearing before the said District Court in support of the said order of the said referee and in opposition to this petitioner's petition for review, so that it would be a useless formality to ask the said trustee to petition this court to revise the said order entered in the said District Court.

WHEREFORE, your petitioner prays that the said order, judgment and decree of the said District Court be reviewed and revised in the matters of law and that it be adjudged by this court that the said orders of the District Court and of the referee be reversed and that the said F. E. Burns, W. C. Dawson and James Fowler take nothing by their claims.

COMMONWEALTH OF AUSTRALIA,

By CORWIN S. SHANK,

Its Attorney. [7]

United States of America,  
State of Washington,  
County of King,—ss.

Corwin S. Shank, being first duly sworn, on oath, deposes and says: That he is the attorney of the Commonwealth of Australia in the foregoing action and signed the foregoing petition on behalf of the said petitioner, being duly authorized thereto, and that he has read the foregoing petition, and makes oath that the statements contained therein are true as he verily believes.

[Seal]

CORWIN S. SHANK.

Subscribed and sworn to before me this 21st day of December, 1922.

H. C. BELT,

Notary Public in and for the State of Washington,  
Residing at Seattle. [8]

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In the District Court of the United States for the  
Western District of Washington, Northern  
Division.

IN BANKRUPTCY—No. 6361.

In the Matter of PATTERSON-MacDONALD  
SHIPBUILDING COMPANY, a Corpora-  
tion, Bankrupt.

**Order Appointing C. R. Hawkins Special Master in  
Chancery.**

Upon the stipulation of the attorneys for the



trustee in bankruptcy and of the attorneys for Mark Sheldon, as commissioner for the Commonwealth of Australia in the United States of America, it is hereby

ORDERED that C. R. Hawkins be and he hereby is appointed a special master in chancery to take evidence and make findings upon the questions arising out of the proof of secured claim filed by Mark Sheldon, as commissioner for the Commonwealth of Australia in the United States of America, and the objections thereto by the trustee in bankruptcy and submit his findings and conclusions to this court in the same manner as if sitting as a referee in bankruptcy.

Done in open court this 12 day of October, 1920.

JEREMIAH NETERER,

Judge.

O. K.—BRONSON, ROBINSON & JONES,

Attys. for Trustee.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Oct. 12, 1920. F. M. Harshberger, Clerk. By P. A. Page, Deputy. [9]

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In the District Court of the United States for the Western District of Washington, Northern Division.

IN BANKRUPTCY—No. 6361.

In the Matter of PATTERSON-MacDONALD SHIPBUILDING COMPANY, a Corporation, Bankrupt.

**Referee's Certificate on the Petition for Review of  
Mark Sheldon as Commissioner for the Com-  
monwealth of Australia, in the United States  
of America.**

To Honorable JEREMIAH NETERER, Judge of  
the Above-entitled Court:

I, C. R. Hawkins, one of the referees of said  
court in bankruptcy, do hereby certify that during  
the course of the proceedings in said cause before  
me, to wit, on the 7th day of September, 1921, the  
trustee filed herein his report and petition in which,  
among other things, he reports as follows, to wit:

“In the controversy between the trustee and  
the Australian Government, pending before  
Hon. C. R. Hawkins as Special Master in Chan-  
cery, there have been two matters submitted to  
arbitration. One of these was a dispute as to  
who should pay the cost of certain stores and  
equipment amounting to approximately \$109,-  
000 which it was agreed by the parties in their  
contract of March 31, 1919, should be submitted  
to James Fowler of Seattle for determination.  
This matter was duly submitted to James  
Fowler, and considered by him, and an  
award was made, finding that the bank-  
rupt should stand approximately \$43,000,  
and the Australian Government approximately  
\$75,000 of the cost of such items in dis-  
pute. Mr. Fowler has now submitted to your  
trustee his bill for services as arbitrator in this  
connection in the sum of \$1000, and your trus-



tee believes that this is a reasonable sum for the services of the arbitrator in this connection, and your trustee should be authorized and directed to pay one-half of said amount, as the trustee's share of said expense.

The other matter submitted to arbitration was that of the bankrupt's claim for allowance from the Australian Government on account of work and materials furnished extra to its contract, involving matters in dispute of approximately \$1,114,944.40, which question was referred to a board of arbitrators consisting of Frank Walker, selected by the Australian Government, Frank E. Burns, selected by the Trustee, and W. C. Dawson, selected by the said [10] Walker and Burns. These arbitrators held numerous and lengthy hearings, examined a great amount of evidence, and considered the case very thoroughly, and have made an award finding that the bankrupt is entitled to an allowance from the Australian Government for work done and materials furnished extra to its contract, in the sum of \$1,028,458.66. Under the arrangement for selection of these arbitrators and holding of this arbitration, the trustee should pay the fees of Frank E. Burns, the arbitrator selected by him, and one-half of the fees of W. C. Dawson, the third member of the board; that said Frank E. Burns and W. C. Dawson have submitted bills for said service in the sum of \$3000 each, and your trustee believes that said charges are fair and reasonable, and

that he should be authorized and directed to pay the bill of the said Burns, and one-half of the bill of the said Dawson,”

and in said petition asks that a creditors' meeting be called to consider and act upon the matters set out in said report.

Pursuant to said petition an order was made calling a meeting of creditors to be held on the 23d day of September, 1921, and notice of said meeting of creditors was mailed to all the creditors and parties in interest as is required by law; that among other things contained in said notice was the following:

“You are further NOTIFIED that the trustee reports that James Fowler, an arbitrator named in the contract between the Australian Government and the bankrupt corporation, has submitted his bill for services as such arbitrator in the sum of \$1000.00, one-half of which is chargeable against the bankrupt and the trustee recommends the payment thereof, also that Frank E. Burns, selected by the trustee and W. C. Dawson selected as the third man in the arbitration of the bankrupt's claim for allowance against the Australian Government on account of work and material furnished extra to its contract, have submitted bills for said services in the sum of \$3000.00 each. The service of Frank E. Burns is chargeable to the trustee and one-half of the service of W. C. Dawson is chargeable to the trustee. The trustee recommends the payment of the bills for such services as submitted.”

That at said meeting of creditors, upon the consideration of the matter of the allowances of compensation to the arbitrators mentioned in the trustee's report and petition and in the notice mailed to creditors, an objection was made on behalf of Mark [11] Sheldon as Commissioner of the Commonwealth of Australia in the United States of America, the Martin General Agency and Aero Alarm Co. on the ground that no compensation whatever could properly be allowed to said arbitrators out of the estate of the bankrupt. No objection whatever was made to the amount of the allowance asked for by said arbitrators and recommended by the trustee, and upon inquiry by the referee it was expressly stated by Mr Shank, representing the Commonwealth of Australia, that he considered the amounts asked for by the respective arbitrators and recommended by the trustee, reasonable if any compensation was to be allowed, but that it was his contention that no allowances could be made to said arbitrators out of the estate of the bankrupt.

After due consideration of the objections made, it was announced by the referee that allowances would be made to each of said arbitrators in the sum recommended by the trustee, and subsequently thereto, on the 21st day of October, 1921, an order was made, subject to the approval of the Judge of this court, authorizing and directing the trustee to pay to James Fowler, one-half of his bill for services rendered as arbitrator in the matter submitted to him for arbitration in the sum of \$500.00; to

F. E. Burns for his services as arbitrator in the matter submitted to him, W. C. Dawson and Frank Walker, the whole amount of his bill in the sum of \$3000.00, and to W. C. Dawson, one of the arbitrators in said matter, one-half of his bill for services in said arbitration in the sum of \$1500.00.

The said Commissioner for the Commonwealth of Australia, feeling aggrieved at said order, filed his petition herein for a review of said order, which was granted.

The only questions presented for review are:

First. Whether James Fowler, who was selected and named as an arbitrator of certain questions in dispute between the parties in this controversy, by said parties [12] themselves, by an agreement dated March 31st, 1919, having performed the services required of him as said arbitrator, is entitled to a reasonable compensation therefor, and whether the trustee in bankruptcy may properly be authorized and directed to pay from the funds of the estate one-half thereof.

Second. Whether Frank E. Burns, selected as an arbitrator by the trustee in bankruptcy, and W. C. Dawson, selected as the third man on the Board of Arbitrators by said Frank E. Burns and Frank Walker, the arbitrator selected by said Commissioner of the Australian Government, to arbitrate certain questions in dispute between said parties as is more fully set out in the findings contained in the order complained of herein, having performed the services required of them, are entitled to reasonable compensation therefor, and whether the

trustee in bankruptcy may properly be authorized and directed to pay the entire sum found to be a reasonable compensation for the services of said Burns and one-half of the sum found to be a reasonable compensation for the services rendered by said Dawson, out of the funds belonging to said estate.

It was the contention of the Australian Government before me, at said meeting of creditors, that the arbitrator James Fowler was not legally authorized to act as such arbitrator and make an award on the questions submitted to him and for that reason no allowance of compensation whatever could be made for his services, notwithstanding the fact that both parties to the controversy availed themselves of his services as such arbitrator, appeared before him, submitted evidence and participated in the proceedings until the final conclusion and award.

For like reasons it was urged by said Commissioner of the Australian Government that no allowance whatever could be made to the arbitrators, Burns and Dawson, notwithstanding the fact that said Commissioner of the Australian Government, by Mr. Shank, his attorney, selected Mr. Frank Walker, one of the arbitrators in said matter, who, together with Mr. Burns, selected by the trustee, proceeded to name W. C. Dawson on the board, as was provided by the contract between the parties, and after said board was organized both parties availed themselves of the services of said board, appeared before them, submitted evidence and participated in the proceedings throughout the inquiry



until the said award of said [13] arbitrators was made and submitted.

The facts which are pertinent to a review of the questions presented are contained in the order complained of.

I was of the opinion that under all the facts of this case that the respective arbitrators having performed the services for which they were selected and employed were entitled to a reasonable compensation for the services rendered, and as it appeared that the trustee and creditors were all of the opinion that the amount asked for by the respective arbitrators was only a fair and reasonable compensation for the services rendered, the order complained of was made.

I hand up herewith as the record in this case:

1. The order complained of, in which is set out all the facts material to the issues raised.

2. The petition for review.

Dated at Seattle, in said District, this 28th day of December, 1921.

Respectfully submitted,

C. R. HAWKINS,

Referee in Bankruptcy. [14]

In the District Court of the United States for the Western District of Washington, Northern Division.

**IN BANKRUPTCY—No. 6361.**

In the Matter of PATTERSON-MacDONALD SHIPBUILDING COMPANY, a Corporation, Bankrupt.

**Order for Disbursement.**

This matter coming on for hearing at a creditors' meeting duly held upon the 23d day of September, 1921, at 1204 L. C. Smith Building, Seattle, Washington, at the hour of two o'clock P. M., and adjournments thereof, upon trustee's report and petition for authority to pay to James Fowler the sum of \$500, to F. E. Burns, the sum of \$3000, and to W. C. Dawson, the sum of \$1,500, for and on account of services rendered the trustee and the estate of the above-named bankrupt, and it appearing that by a certain agreement dated March 31, 1919, entered into between the Australian Government and the bankrupt, it was provided that certain questions of stores and equipment in dispute between the parties, and the matter of which of the parties should pay for the same, should be decided by reference to the said James Fowler, and that said matters and questions, involving items in dispute amounting to approximately \$109,000, have been submitted to the said James Fowler for his determination, and considered by him, and an award has been made by



him finding that the bankrupt should pay for approximately \$34,000 of the items in dispute, and that the Australian Government should pay for approximately \$75,000 of the items in dispute, and that the services of the same James Fowler have been rendered to, and received by the trustee and the estate in bankruptcy, and that the charges made by said James Fowler for such services amount to the sum of \$1,000, and such charge being expressly agreed to and recognized by all parties present as being fair and reasonable, and that one-half thereof should be borne by the trustee. [15]

And it further appearing that certain other matters in dispute between the bankrupt and the Australian Government, represented and appearing by Mark Sheldon, its Commissioner, relating to work and materials claimed by the bankrupt to have been furnished extra to its contract with the Australian Government, and involving matters in dispute of approximately \$1,114,944.40, have heretofore, and pursuant to a provision contained in the contract between the said bankrupt and the Australian Government, been referred and submitted to a board of three arbitrators, consisting of Frank Walker, selected by the Australian Government, Frank E. Burns, selected by the trustee, and W. C. Dawson, selected by said Walker and Burns, which said arbitrators have held numerous and lengthy hearings and examined a great amount of evidence, and considered the case very thoroughly, and have made an award finding that the bankrupt is entitled to an allowance from the Australian Government for

work done and materials furnished extra to its contract, in the sum of \$1,028,458.66, and that under the arrangement for the selection of said arbitrators and the holding of said arbitration, the trustee should pay the fees of Frank E. Burns, the arbitrator selected by him, and one-half of the fee of W. C. Dawson, third member of the board of arbitrators, and that the services of said arbitrators have been rendered to and accepted by the trustee and the estate of the above-named bankrupt, and it being expressly agreed and recognized by all parties present that the charges submitted by said arbitrators of \$3,000 on account of the fees of Frank E. Burns, and \$1,500 on account of the fees of W. C. Dawson, are fair and reasonable amounts for the services rendered,

And no exception or objection being taken or made to the payment of said sums, except the objection of the Australian Government, Martin General Agency and Aero Automatic Alarm that such sums are not properly chargeable to the trustee and the estate of the bankrupt,

NOW, IT IS ORDERED that the trustee be and he hereby is [16] authorized and directed to execute and deliver his trustee's check, to be duly countersigned by the referee, to the following persons for the following items and amounts, to wit:

JAMES FOWLER:

One-half of bill for services rendered... \$500  
F. E. BURNS:

Services as arbitrator.....\$3,000

W. C. DAWSON:

One-half of bill for services as arbitrator \$1,500

Dated in open court at Seattle in said district this 21 day of October, 1921.

C. R. HAWKINS,  
Referee.

Approved:

\_\_\_\_\_,  
Judge.

Filed this 21 day of Oct., 1921, at 10 o'clock A. M.  
C. R. Hawkins, Referee. [17]

\_\_\_\_\_  
In the District Court of the United States for the  
Western District of Washington Northern  
Division.

IN BANKRUPTCY—No. 6361.

In the Matter of PATTERSON-MacDONALD  
SHIPBUILDING COMPANY, a Corporation.  
Bankrupt.

**Petition for Review of Mark Sheldon.**

The petition of Mark Sheldon, as Commissioner for the Commonwealth of Australia in the United States of America respectfully represents:

First: That heretofore on July 31, 1920, this petitioner duly presented his secured claim against the said bankrupt founded upon various breaches of a contract for the building by the bankrupt of ten ships for the petitioner, and thereafter the said trustee of the said bankrupt filed certain objections to the said claim.

Second: That thereafter on the 12th day of October, 1920, an order was duly entered by a Judge of this court in this proceeding appointing C. R. Hawkins a special master to take evidence and make findings upon the questions arising out of the proof of said claim and objections thereto and to submit findings and conclusions to this Court in the same manner as if sitting as a referee in bankruptcy.

Third: That pursuant to the said order the said parties appeared before the said C. R. Hawkins, as special master, [18] upon the 20th day of October, 1920, and this petitioner proceeded to prove his claim.

Fourth: That during the progress of the said proof the said trustee objected to any further proceedings before the said special master until certain counterclaims of the trustee against this petitioner had been submitted to certain arbitrators to be appointed pursuant to certain clauses in the said contract, and thereupon the said master, over the objection of this petitioner, refused to proceed further with the said claim until the said matter had been submitted to arbitration.

Fifth: That the trustee, without obtaining any order or authority from either the Judge or the referee of this court, thereupon assumed to employ Frank E. Burns, W. C. Dawson and James Fowler as arbitrators, and the said persons so employed together with Frank Walker thereafter made certain awards and filed the same in this case, and thereafter presented to the said trustee bills for

services in the following amounts: Frank E. Burns \$3000.00; W. C. Dawson \$1500.00; James Fowler \$500.00.

Sixth: That the said trustee duly filed a report in said cause recommending the payment of the said claims, and thereafter at a creditors' meeting duly held before the Hon. C. R. Hawkins, referee in bankruptcy, this petitioner duly made objections to the said claims as hereinafter set forth, but over the objections of this petitioner the said claims were approved and thereafter upon the 21st day of October, 1921, an order was entered by the said referee authorizing the payment of said claims.  
[19]

Seventh: This petitioner claims that the said ruling and order of the said referee is erroneous for the following reasons:

1. That the said trustee had no power or authority to employ arbitrators without the express order and direction of the bankruptcy court.

2. No order of the bankruptcy court was ever entered authorizing the employment of any arbitrators or authorizing the trustee to submit any question to arbitration.

3. The submission by the trustee of any question relating to the liquidation of this petitioner's claim to any other court or board of arbitrators was contrary to the express directions contained in the above-mentioned order appointing a special master to pass upon the said claim.

4. The awards of the said arbitrators are void upon their face.



5. The said arbitrators have rendered no beneficial service to the said trustee for the reason that the said awards have not yet been approved by this Court, but will be found by this Court upon objections which have been offered thereto by this petitioner to be void and of no force and effect.

Eighth. That this petitioner desires a review by the Judge of this court of the said order made by the said referee and files this petition therefor, and he therefore prays that the error complained of and the questions of law and fact raised before the said referee and decided by him may be certified by the said referee to the district Judge of this court that he may review the said order heretofore made and make an order setting aside the said order of payment, and that none of the said payments be made, and your petitioner ever prays.

MARK SHELDON,

As Commissioner for the Commonwealth of  
Australia in the United States of America.

[20]

By SHANK, BELT & FAIRBROOK,

His Counsel.

Service of the within paper is hereby admitted  
this 28th day of October, 1921.

BRONSON, ROBINSON & JONES,

Attorneys for Trustee of Pat. McDon.

Filed this 28th day of Oct. 1921, at 4 o'clock P. M.  
C. R. Hawkins, Referee. [21]

In the District Court of the United States for the Western District of Washington Northern Division.

IN BANKRUPTCY—No. 6361.

In the Matter of PATTERSON-MacDONALD SHIPBUILDING COMPANY, a Corporation, Bankrupt.

**Order on Petition for Review of Mark Sheldon.**

This cause came on to be heard at this term upon the petition of Mark Sheldon, as Commissioner for the Commonwealth of Australia in the United States of America, to review an order made and entered by the Referee herein, upon the 21st day of October, 1921, allowing and ordering payment to James Fowler of the sum of Five Hundred Dollars (\$500.00), to F. E. Burns of the sum of Three Thousand Dollars (\$3,000.00), and to F. E. Dawson, of the sum of Fifteen Hundred Dollars (\$1500.00), and was argued by counsel, and thereupon upon consideration thereof, it was,—

ORDERED, ADJUDGED and DECREED as follows: That said petition be and it hereby is denied, and the said order be and it hereby is approved, confirmed and sustained in every respect.

Done in open court this 26th day of Oct. 1922.

JEREMIAH NETERER,

Judge.

To the foregoing the Commonwealth of Australia and Mark Sheldon, as Commissioner for the Com-



monwealth of Australia, excepts, and the exception is allowed.

Oct. 26, 1922.

JEREMIAH NETERER,

Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Oct. 26, 1922. F. M. Harshberger, Clerk. By P. A. Page, Deputy. [22]

United States of America,  
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the District Court of the United States for the Western District of Washington, do hereby certify that I have compared the foregoing copy with the original order aptg. C. R. Hawkins, Special Master, Referee's cert. on review in matter of arbitrator's fees, Referee's order of disbursement, petition for review, and order on petition in the foregoing entitled cause, now on file and of record in my office at Seattle, Wash., and that the same is a true and perfect transcript of said original and of the whole thereof.

Witness my hand and the seal of said court, this 21st day of November, 1922.

[Seal]

F. M. HARSHBERGER,

Clerk.

By Frank L. Crosby, Jr.,

Deputy.

[Endorsed]: No. 6361. In the District Court of the United States for the Western District of Washington. In the Matter Shipbuilding Company, a

Corporation, Bankrupt (F. E. Burns, F. E. Dawson, James Fowler and John L. McLean, Appellees).  
Certified Copy of Order Appointing C. R. Hawkins Special Master. Referee's Cert. in Matter of Arbitrator's Fees. Order of Referee for Payment of Arbitrator's Fees. Petition for Review. Order of Court Entered Oct. 26, 1922, Approving Referee's Order of Payment. [23]

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United States Circuit Court of Appeals for the  
Ninth Circuit.

No. —.

In the Matter of PATTERSON-MacDONALD  
SHIPBUILDING COMPANY, a Corporation,  
Bankrupt.

COMMONWEALTH OF AUSTRALIA,  
Petitioner,

vs.

F. E. BURNS, W. C. DAWSON, JAMES FOW-  
LER and JOHN L. McLEAN, as Trustees  
in Bankruptcy of PATTERSON-Mac-  
DONALD SHIPBUILDING COMPANY,  
a Corporation, Bankrupt,

Respondents.

**Notice of Filing Petition for Review.**

To Messrs. Bronson, Robinson & Jones, Attorneys  
for the Above-mentioned Respondents.

YOU ARE HEREBY NOTIFIED that on the  
26th day of December, 1922, at the opening of the

office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, in the City of San Francisco, California, I will file in said office a petition for review in the above-entitled cause, a copy of which petition is hereto attached as a part of this notice, and I will then ask to have the case docketed and the necessary order made therein to have the said case set down for hearing.

CORWIN S. SHANK,  
Attorney for Said Petitioner Commonwealth of  
Australia.

We hereby accept service of the above notice  
this 21st day of December, 1922.

BRONSON, ROBINSON & JONES,  
Attorneys for Said Respondents.

[Endorsed]: No. —. United States Circuit  
Court of Appeals for the Ninth Circuit. In the  
Matter of Patterson-MacDonald Shipbuilding Com-  
pany, a Corporation, Bankrupt. Commonwealth of  
Australia, Petitioner, vs. F. E. Burns, W. C. Daw-  
son, James Fowler and John L. McLean, as Trus-  
tee in Bankruptcy of Patterson-MacDonald Ship-  
building Company, a Corporation, Bankrupt, Re-  
spondents. Notice of Filing Petition for Review.  
[24]

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[Endorsed]: No. 3960. United States Circuit  
Court of Appeals for the Ninth Circuit. In the  
Matter of Patterson-MacDonald Shipbuilding Com-  
pany, a Corporation, Bankrupt. Commonwealth  
of Australia, Petitioner, vs. F. E. Burns, W. C.

Dawson, James Fowler and John L. McLean, as Trustee in Bankruptcy of Patterson-MacDonald Shipbuilding Company, a Corporation, Bankrupt, Respondent. Petition for Revision Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, a Certain Order of the United States District Court for the Western District of Washington, Northern Division, and Transcript of Record in Support Thereof.

Filed December 26, 1922.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

